

**WISCONSIN DEPARTMENT OF  
ADMINISTRATION**

**JIM DOYLE**  
GOVERNOR  
**DANIEL J. SCHOOFF**  
SECRETARY

Office of the Secretary  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1741  
Fax (608) 267-3842

Received & Inspected

MAY 06 2011

FCC Mail Room

April 28, 2011

Marlene H. Dortch  
Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

RE: CC Docket No. 96-45 and CC Docket No. 02-6 – Request for Waiver

Dear Ms. Dortch:

Enclosed please find a Request for Review and Request for Waiver submitted on behalf of TEACH Wisconsin. TEACH Wisconsin is a program within the Wisconsin Department of Administration that applies for funds from the Federal Communications Commission's (FCC) Schools and Libraries Program (Program) on behalf of over 900 schools, libraries and school districts throughout the State of Wisconsin. On March 7, 2011, TEACH Wisconsin received four Notifications of Improperly Disbursed Funds related to Funding Year 2005: July 1, 2005 – June 30, 2006 from the Universal Services Administrative Company. All four were sent in the same envelope, although some were labeled February 28, 2011, and others were labeled March 2, 2011. For the sake of simplicity, we are sending this Request for Review and Request for Waiver 60 days following the earliest of these dates.

Thank you for your attention to this matter. If you have any questions, concerns, or require additional information, please do not hesitate to contact me at your earliest convenience.

Sincerely,

Mark A. Herman  
Legal Counsel  
Wisconsin Department of Administration

608-267-7877 (direct)  
[Mark.Herman@wi.gov](mailto:Mark.Herman@wi.gov)

cc w/encl.: Universal Services Administrative Company  
Schools and Libraries Division – Correspondence Unit  
30 Lanidex Plaza West  
P.O. Box 685  
Parsippany, NJ 07054-0685

No. of Copies rec'd 0  
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# **FEDERAL COMMUNICATIONS COMMISSION**

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**In the Matter of Request for Waiver and Review by**

**TEACH Wisconsin, a Program of the Wisconsin Department of Administration,**

**of Decision of Universal Services Administrator,**

**CC Docket Numbers: 02-6 and 96-45.**

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## **(1) STATEMENT OF INTEREST**

TEACH Wisconsin (TEACH) is a program administered by the Wisconsin Department of Administration. TEACH applies for and accepts grants as a consortium of over 900 school districts, schools and libraries throughout the State of Wisconsin.<sup>1</sup> Specifically, TEACH applies for funding from the Federal Communications Commission's Schools & Libraries Program E-rate (Program). The Universal Services Administration Corporation (USAC) administers the Program on behalf of the Federal Communications Commission (FCC).

On March 7, 2011, TEACH received a letter from USAC. USAC's letter contained four separate documents (reports). The reports were a result of an audit finding by Ernst & Young dated October 5, 2009. Two of the reports were entitled Funding Disbursement Recovery Reports. Two of the reports were entitled Notification of Commitment Adjustment Letter. Two of the reports were dated February 28, 2011. Two reports were dated March 2, 2011. Thus, there is a discrepancy of four days' time within the same letter. Since this appeal is post-marked on the 60<sup>th</sup> day under either standard, there should not be a dispute as to timeliness.

USAC is seeking to rescind in full two funding commitments.<sup>2</sup> All reports concern Funding Year 2005: July 1, 2005 – June 30, 2006. Under the first, USAC would recover \$2,015,211.76.<sup>3</sup> Under the second, USAC would recover \$525,003.79.<sup>4</sup> Together, these amounts represent the entire grant awarded to all schools and libraries in the State of Wisconsin for the 2005-2006 funding year. In both cases, the reason given for rescinding all funding is that Wisconsin failed to have a valid contract in place under state law by the date of

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<sup>1</sup> Affidavit of Robert Bocher, Wisconsin Department of Public Instruction.

<sup>2</sup> USAC also seeks to recover two smaller amounts under different theories, assuming that this waiver request is granted. TEACH does not object to the recovery of these smaller amounts, which are \$136,597.63 and \$7,514.24, respectively.

<sup>3</sup> Notification of Commitment Adjustment Letter, dated February 28, 2011, re Funding Request Number 1342316.

<sup>4</sup> Notification of Commitment Adjustment Letter, dated March 2, 2011, re Funding Request Number 1342225.

submission of the Form 471 application. The decision does not note the fact that a valid contract was in place under state law within a few days of the submission, and a fully executed agreement was in place within less than two weeks of the Form 471 deadline.

Loss of all funds for an entire year would be a substantial hardship for Wisconsin's schools and libraries. Wisconsin's schools and libraries are already facing the prospect of substantial funding decreases due to the current fiscal crisis facing Wisconsin, and many other states. Simply put, there is no year in which Wisconsin's schools and libraries could easily sustain such a loss, but the loss of funding now would be particularly difficult.<sup>5</sup>

## **(2) RELEVANT MATERIAL FACTS**

The Solicitation for the contract was issued on July 4, 2004, seven months prior to the Form 471 due date.<sup>6</sup> The Solicitation itself was structured to parallel the eventual contract, and contained descriptions of standard contractual terms to be incorporated into the agreement.<sup>7</sup> Further, any party bidding on the contract was required to specifically identify any exceptions to the contractual terms as described in the Solicitation.<sup>8</sup> Consequently, when the vendor, Wisconsin Bell, Inc. (now AT&T), was selected in the fall of 2004, TEACH and AT&T had substantial agreement on the terms and conditions of the contract many weeks before the 471 application deadline.

A written contract was developed by Wisconsin procurement staff on January 24, 2005. AT&T offered an initial counter on February 4, 2005, and forwarded a full version with executive approval on February 14, 2005.<sup>9</sup> AT&T offered a second revised contract on February 18, 2005, and offered to check in with TEACH officials to ensure that a signed copy of the contract was not needed on that day. *Pursuant to Wisconsin law, a written agreement can constitute an enforceable contract, even if not signed.*<sup>10</sup> *Intent to contract is sufficient.* The e-mail shows that AT&T had that intent. So TEACH program staff had good reason to believe that a valid agreement had been reached when the application was submitted.

Wisconsin procurement staff were not directly involved with the TEACH program, and so were not intimately familiar with the E-rate's applicable rules

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<sup>5</sup> Affidavit of Robert Bocher, Wisconsin Department of Public Instruction.

<sup>6</sup> See Solicitation, Title page of the Solicitation, or the bottom of any numbered page from 1-72.

<sup>7</sup> See *id.* at pp. 63-66.

<sup>8</sup> See Standard Terms and Conditions, § 2.0, embedded in link to Solicitation following numbered p. 72.

<sup>9</sup> E-mail *Labeled "Exhibit 3."*

<sup>10</sup> *Consolidated Papers, Inc., v. Dorr-Oliver Inc.*, 451 N.W.2d 456, 461 (Wis. Ct. App. 1989)

and procedures. Unfortunately, Wisconsin procurement staff were forced to object to two provisions in this complex transaction.<sup>11</sup> Wisconsin procurement staff acted to protect the public interest, and refused to enter into the contract until the two provisions conformed to the terms of the Solicitation, which had not been objected to by the vendor during the competitive bidding process.<sup>12</sup> In the end, Wisconsin procurement staff entered into a contract with the lowest cost bidder after a rigorous competitive bidding process. This resulted in an agreement containing very beneficial service terms and the broadband capacity that Wisconsin schools and libraries needed, and still need. Under Wisconsin law a valid agreement was in place by February 23, 2005, and signatures were obtained on that date and March 2, 2005.<sup>13</sup>

### **(3) QUESTION PRESENTED**

Should the FCC grant a waiver to TEACH of 47 C.F.R. § 54.504(c), where TEACH would have had a binding agreement in place by the deadline, but for AT&T's refusal to timely agree to include provisions previously agreed to in the final written contract; where a binding agreement was in place under Wisconsin law within five (5) days of the USAC deadline; and where an agreement was signed by all parties within twelve (12) days of the USAC deadline?

### **(4) RELIEF SOUGHT**

Waiver of 47 C.F.R. § 54.504(c) for 2005-06 funding year funding request numbers 1342225 and 1342316.

### **(5) ARGUMENT**

Any Violation of the Rule had No Impact on Program Integrity or Implementation – the Most Competitive Price Under the Most Favorable Terms was Obtained.

“Competitive bidding requirements serve as a central tenet of the E-rate program. They ensure more efficient pricing... and help deter waste, fraud and abuse” or “misuse of funds.”<sup>14</sup> The FCC has noted that, “rigid adherence to the

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<sup>11</sup> E-mail labeled “Exhibit 4.”

<sup>12</sup> E-mail labeled “Exhibit 5.”

<sup>13</sup> E-mail labeled “Exhibit 6.”

<sup>14</sup> FCC 07-35 at p. 4, § III, ¶ 8; p. 5, § III, ¶ 10.

rule in (similar) cases does not further the purposes of the statutory goal of providing universal service to schools and libraries.”<sup>15</sup>

USAC’s auditors found *no evidence* of waste, fraud, abuse or other misuse of funds in this case. USAC’s determination to pursue recovery of the funds will not ensure more efficient pricing or better quality of services to schools and libraries. In fact, the opposite will be true. If USAC deprives TEACH of funding then the message sent will be that Wisconsin procurement staff must accept whatever deal a vendor puts in front of them on the signing deadline date, regardless of the terms. Rigid adherence to the program rule in this case would actually undermine the goals of the statute – providing quality, affordable telecommunications services to over 900 of our schools and libraries.

The reason for the lack of timeliness was the refusal of AT&T to accept terms that it had previously agreed to as part of the bid solicitation process. Wisconsin procurement staff acted to serve the public interest in this case. There was good cause for the minimal delay in completion of the contract.

Granting a waiver in this case would be in keeping with similar FCC decisions. The FCC ruled in favor of allowing funding for 66 similarly situated applicants in one case alone.<sup>16</sup> In another case, FCC 10-122 the FCC granted 97 requests for late filings of Form 471s.<sup>17</sup> Generally speaking, all persons granted waivers completed their agreements within 14 days of the original deadline. In this case, a legally binding agreement under Wisconsin law was in place within 5 days, and the written agreement was executed in 12 days. So the breach of timeliness in this case appears to be within the range of a *de minimus* violation in the view of the FCC.

In summary, Wisconsin procurement staff pursued a State Master Agreement that provided services for multiple agencies and programs, including over 900 schools and libraries as part of TEACH. The process was begun in a timely fashion, and was completed in a reasonable manner, consistent with their duty to protect the public interest. A binding agreement was in place several months prior to the beginning of the E-rate year in question. There is no allegation of fraud, waste, misuse or abuse. Wisconsin procurement officials have been made aware of the gravity of the issue. Accordingly, we respectfully request that the FCC grant this waiver request, consistent with FCC decisions in case numbers 07-35 and 10-122.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at p. 3. § III. ¶ 6.

<sup>17</sup> FCC 10-122, at p. 4 ¶ 8.

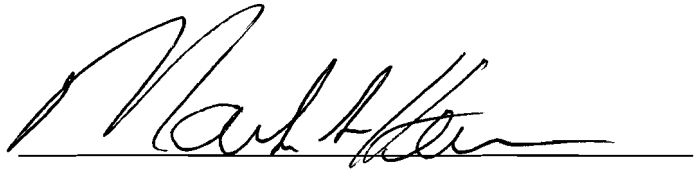
2. I am employed as an attorney with the Wisconsin Department of Administration. In that capacity I have reviewed available documents related to the procurement of a contract between TEACH and Wisconsin Bell, Inc. During the course of negotiation of the contract Wisconsin Bell, Inc., was acquired by SBC. Subsequently, SBC was acquired by AT&T. All references hereafter will be to AT&T. I have also reviewed those documents with staff, including Andrea Konik (Welch), who was directly involved in the finalization of the contract.

3. The solicitation for the contract was issued on July 6, 2004, seven months prior to the Form 471 due date. The Solicitation itself was structured to parallel the eventual contract, and contained descriptions of standard contractual terms to be incorporated into the agreement. Further, any party bidding on the contract was required to specifically identify any exceptions to the contractual terms as described in the Solicitation. Consequently, when AT&T, was selected in the fall of 2004, TEACH and AT&T had substantial agreement on the terms and conditions of the contract, and had identified areas for negotiation.

4. A written contract was developed by Wisconsin procurement staff on January 24, 2005. AT&T offered an initial counter on February 4, 2005, and forwarded a full version with executive approval on or about February 14, 2005. AT&T offered a second revised contract on February 18, 2005, and offered to check in with TEACH officials.

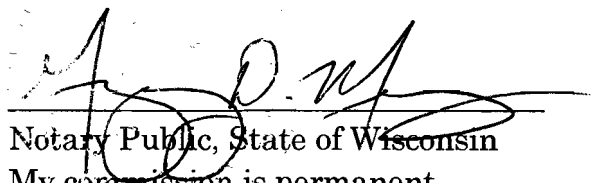
5. In 2005 the Department of Administration's procurement staff completed a contract with Wisconsin Bell, Inc. (which subsequently merged with SBC, and AT&T and is referred to as AT&T hereafter). AT&T was the low bidder by a substantial amount. Specifically, the final form of the agreement was approved by both parties and signed by an AT&T executive on February 23, 2005. This created a binding agreement under Wisconsin law. The agreement was formally executed by the Secretary of the Department of Administration on March 2, 2005.

6. Wisconsin procurement staff were not directly involved with the TEACH program, and so were not intimately familiar with applicable rules and procedures. Unfortunately, Wisconsin procurement staff were forced to object to two provisions in this complex transaction. Wisconsin procurement staff acted to protect the public interest, and refused to enter into the contract until the two provisions conformed to the terms of the Solicitation, which had not been objected to by the vendor during the competitive bidding process.

A handwritten signature in dark ink, appearing to read "Mark A. Herman", written over a horizontal line.

Mark A. Herman

Subscribed and sworn to before me  
this 28th day of April, 2011.

A handwritten signature in dark ink, appearing to read "Gregory P. Murray", written over a horizontal line.

Notary Public, State of Wisconsin  
My commission is permanent.

Gregory P. Murray



In the Matter of Request for Waiver and Review by

TEACH Wisconsin, a Program of the Wisconsin Department of Administration,

of Decision of Universal Services Administrator,

CC Docket Numbers: 02-6 and 96-45.

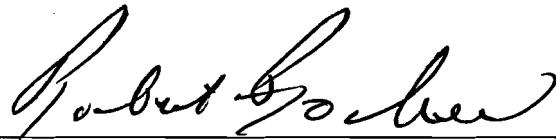
STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

1. I make this affidavit based on personal knowledge and in support of the request for waiver by TEACH, a program of the Wisconsin Department of Administration.

3. Recoupment of all funds granted to Wisconsin schools and libraries for the 2005-2006 funding year would have a substantial and harmful

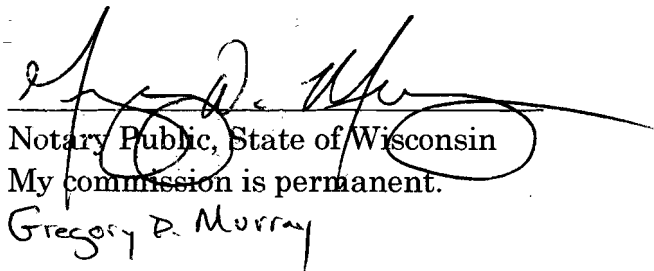
impact on the ability of schools and libraries to serve the needs of Wisconsin students and residents.

4. Current budget proposals in the State of Wisconsin call for substantial reductions in funding to Wisconsin schools and libraries. These cuts are unprecedented in my experience, which spans more than twenty years of government service. This loss of funding would be extremely difficult for schools and libraries to absorb in the current budgetary environment.

A handwritten signature in cursive script, reading "Robert Bocher", written over a horizontal line.

Robert Bocher

Subscribed and sworn to before me  
this 28th day of April, 2011.

A handwritten signature in cursive script, reading "Gregory D. Murray", written over a horizontal line.

Notary Public, State of Wisconsin  
My commission is permanent.  
Gregory D. Murray

03-07-11P01:55 RCVD

Tara Baxter

TEACH WISCONSIN

PO BOX 7844, 101 EAST WILSON STREET, 8TH. FLOOR  
MADISON, WI 53707



Schools and Libraries Division

**Notification of Commitment Adjustment Letter**

**Funding Year 2005: July 1, 2005 - June 30, 2006**

March 02, 2011

Shannon Martin  
TEACH WISCONSIN  
101 EAST WILSON STREET  
MADISON, WI 53702

Re: Form 471 Application Number:	441874
Funding Year:	2005
Applicant's Form Identifier:	Year8471
Billed Entity Number:	199528
FCC Registration Number:	0011898228
SPIN:	143001856
Service Provider Name:	Wisconsin Bell, Inc.
Service Provider Contact Person:	Michael Swisher

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Commitment Adjustment Decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Commitment Adjustment Letter and the Funding Request Number(s) (FRN) you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Notification of Commitment Adjustment Letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

## FUNDING COMMITMENT ADJUSTMENT REPORT

On the pages following this letter, we have provided a Funding Commitment Adjustment Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from your application for which adjustments are necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to your service provider(s) for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on the FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action.

Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc: Michael Swisher  
Wisconsin Bell, Inc.

Funding Commitment Adjustment Report for  
Form 471 Application Number: 441874

Funding Request Number:	1342225
Services Ordered:	TELCOMM SERVICES
SPIN:	143001856
Service Provider Name:	Wisconsin Bell, Inc.
Contract Number:	SRC-88040
Billing Account Number:	608 205 8990 100 3
Site Identifier:	199528
Original Funding Commitment:	\$659,826.07
Commitment Adjustment Amount:	\$659,826.07
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$525,003.79
Funds to be Recovered from Applicant:	\$525,003.79

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During the course of an audit it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on documentation supplied by the applicant and the assistant legal counsel for the Wisconsin Department of Administration. FCC rules require applicants to have a valid contract as defined by the applicants state procurement laws and regulations at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Additionally, it has been determined that funds were improperly disbursed on this funding request. During the course of an audit it was determined that the technology plan for this entity, covering the relevant funding year, was not approved at the time of submission of the Form 486. Program rules require applicants to obtain approval of technology plans by parties qualified to approve technology plans, prior to submitting the Form 486, for services other than basic telecommunications service. Since this is not a request for basic telecommunications service, the technology plan for the relevant funding year needed to be approved prior to submitting the Form 486 or the start of services, whichever was earlier. Since this requirement was not met USAC will seek recovery of \$1,982.20 of improperly disbursed funds from the applicant. This amount is included in the violation above.

03-07-11P01:55 RCVD

Tara Baxter

TEACH WISCONSIN

PO BOX 7844, 101 EAST WILSON STREET, 8TH. FLOOR

MADISON, WI 53707





Schools and Libraries Division

**Notification of Commitment Adjustment Letter**

**Funding Year 2005: July 1, 2005 - June 30, 2006**

February 28, 2011

Shannon Martin

TEACH WISCONSIN

101 EAST WILSON STREET

MADISON, WI 53702

Re: Form 471 Application Number:	441874
Funding Year:	2005
Applicant's Form Identifier:	Year8471
Billed Entity Number:	199528
FCC Registration Number:	0011898228
SPIN:	143001856
Service Provider Name:	Wisconsin Bell, Inc.
Service Provider Contact Person:	Michael Swisher

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

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5. Provide an authorized signature on your letter of appeal.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

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Schools and Libraries Division  
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cc: Michael Swisher  
Wisconsin Bell, Inc.

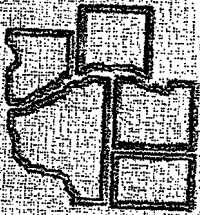
Funding Commitment Adjustment Report for  
Form 471 Application Number: 441874

Funding Request Number:	1342271
Services Ordered:	TELCOMM SERVICES
SPIN:	143001856
Service Provider Name:	Wisconsin Bell, Inc.
Contract Number:	88052
Billing Account Number:	414 R11 8109 229 8
Site Identifier:	199528
Original Funding Commitment:	\$3695,845.35
Commitment Adjustment Amount:	\$69,045.64
Adjusted Funding Commitment:	\$3626,799.71
Funds Disbursed to Date	\$1713,363.06
Funds to be Recovered from Applicant:	\$0.00

After a thorough review, it was determined that the funding commitment for this request must be reduced by \$69,045.64. On the original Form 471 the applicant was approved at a 54 percent discount. FCC rules indicate that the level of poverty shall be measured by the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. During an audit it was determined that the applicant is only eligible to receive a 53 percent discount. This determination was based on the failure to support the discount calculation and adjusting to NSLP data. Accordingly, the commitment has been reduced by \$69,045.64 ( $\$6,904,563.79 \times (54\% - 53\%)$ ) and if recovery is required, USAC will seek recovery from the applicant.

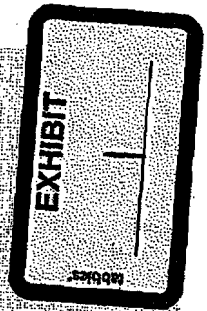
Funding Request Number:	1342316
Services Ordered:	TELCOMM SERVICES
SPIN:	143001856
Service Provider Name:	Wisconsin Bell, Inc.
Contract Number:	SRC-88052
Billing Account Number:	414 R11 8109 229 8
Site Identifier:	199528
Original Funding Commitment:	\$3695,845.35
Commitment Adjustment Amount:	\$3695,845.35
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$2015,211.76
Funds to be Recovered from Applicant:	\$2015,211.76

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. During an audit it was determined that the applicant did not have a contract in place at the time of submission of the Form 471. This determination was based on documentation supplied by the applicant and the assistant legal counsel for the Wisconsin Department of Administration. FCC rules require applicants to have a valid contract as defined by the applicants state procurement laws and regulations at the time they submit the Form 471. Since the applicant was unable to demonstrate that they had a contract in place at the time of submission of the Form 471 that meets the state laws definition of a valid contract, the commitment has been rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.



## SOUTHWEST WISCONSIN LIBRARY SYSTEM

Krista Ross, Director  
kross@swls.org



Serving 30 Public & Branch Libraries in Crawford, Grant, Iowa, Lafayette, & Richland

1775 Fourth Street  
Fennimore, WI 53809  
<http://www.swls.org/>

Phone 608 822 3393  
FAX 608 822 6251  
Toll Free 1 866 866 3393

July 19, 2010

RE: The missing 2005 Letter of Agency for the Dodgeville Public Library

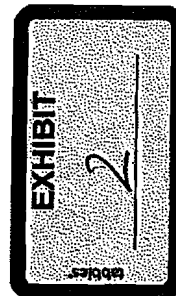
To whom it may concern,

I was the Director of the Dodgeville Public Library from April 1997 to November 2005. I believe that I filed the Letter of Agency for the library by the February 2005 deadline. It was customary for our library to file the Letter of Agency each year since joining the BadgerNet Converged Network in the late 1990s.

TEACH had the full authority to request e-rate funding on behalf of the Dodgeville Public Library.

Sincerely,

*Krista L. Ross*  
Krista L. Ross



## BADGERNET CONVERGED NETWORK MASTER SERVICES AGREEMENT

This BadgerNet Converged Network Agreement (this "Agreement") is entered into as of the date of the last signature hereto (the "Effective Date") by and between SBC Global Services, Inc., a Delaware corporation, on behalf of itself and as an agent for: (i) Wisconsin Bell, Inc., a Wisconsin corporation; (ii) SBC Long Distance, Inc., a Delaware corporation; (iii) SBC Datacomm, Inc., a Delaware corporation; and (iv) SBC Internet Services, Inc., a California corporation (individually and collectively "SBC"), and The State of Wisconsin Department of Administration, with principal offices at 101 East Wilson Street, Madison, Wisconsin 53702-0001 ("Customer" or the "State") for services to be provided in accordance with the response submitted by Wisconsin BadgerNet Access Alliance ("WBAA") response submitted September 20, 2004 (the "Solicitation Response") to the State's BadgerNet Converged Network Solicitation dated July 6, 2004 (the "Solicitation"). SBC and the State are collectively referred to as the "Parties", and each of SBC and the State are a "Party".

WHEREAS, SBC and the State are parties to the BadgerNet Data Access Services Agreement dated February 12, 1998 (the "Existing Data Agreement") and the BadgerNet DS3 Video Interconnect Services Agreement dated March 13, 1998 (the "Existing Video Agreement") (collectively, the "Existing Agreements") for the provision by SBC to the State and the receipt by the State from SBC of voice, video and data networks;

WHEREAS, SBC values the State's business and desires to provide special pricing and other considerations to the State based upon the State's purchase of a minimum commitment of services as described in this Agreement, and the State desires to obtain such special pricing and other considerations with respect to the purchase of such services from SBC.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained in this Agreement, SBC and the State hereby agree as follows:

**Section 1      Term; Renewal of Service.** The term of this Agreement shall commence on the Effective Date and continue thereafter until the fifth anniversary of the Migration Date (defined as the date upon which all the wide area network, Internet transport and video services have been migrated to the converged network and accepted by the State) (the "Initial Term") unless earlier terminated as set forth herein. The Parties shall negotiate in good faith to enter into such renewals, as long as SBC is performing its obligations under the Agreement.

Notwithstanding anything to the contrary contained herein, this Agreement is contingent upon SBC, within thirty (30) days after the Effective Date, entering into all subcontracts and/or other legal arrangements that SBC determines that SBC requires to perform SBC's obligations under this Agreement. If SBC does not enter into such subcontracts and/or other legal arrangement on or prior to that date, either party may cancel this Agreement, in which case this Agreement shall be deemed void ab initio; provided, however, that SBC will continue to perform SBC's obligations under the Existing Agreements.

By providing to SBC written notice of the State's intent to renew this Agreement at least ninety (90) days prior to the fifth anniversary of the Migration Date, the State may renew this Agreement; at its sole discretion, for up to five (5) additional twelve (12) month periods. Any such renewal shall be upon the terms and conditions as set forth in this Agreement, including the same pricing and a proration of the Committed Amount; provided, however, if, for any Renewal Year (as defined herein), the State agrees to purchase different services or a scope of Services not currently contemplated in this Agreement, SBC and the State shall mutually agree to appropriate changes to prices and the Committed Amount to reflect the changes in services purchased by the State during such Renewal Year. (Each twelve-month renewal term shall be referred to herein as a "Renewal Year".)

### **Section 2      Services to be Provided.**

- 2.1 **Order.** The State hereby orders, and SBC agrees to provide, the services and features described in the Solicitation Response (the "Services").
- 2.2 **E-rate Addendum.** SBC shall not have any obligations under this Agreement relating to E-Rate Services until SBC and the State execute and deliver the Addendum in Attachment D.
- 2.3 **Provision of Services** Notwithstanding anything to the contrary contained herein, SBC may suspend the provision of all or any portion of the Services if the State fails to materially comply with

IN WITNESS WHEREOF, the Parties have entered into this Agreement.

The State of Wisconsin Department of  
Administration

By: Marc Marotta

Printed Name: MARC MAROTTA

Title: Secretary - Department of Administration

Date: 3/2/05

SBC Global Services, Inc., on behalf of itself  
and as an agent for Wisconsin Bell, Inc.,  
SBC Long Distance, Inc.,  
SBC Datacomm, Inc., and  
SBC Internet Services, Inc.

By: Catherine Coughlin

Printed Name: Catherine Coughlin

Title: President - Business Communications Services

Date: 2/23/05

List of Attachments:

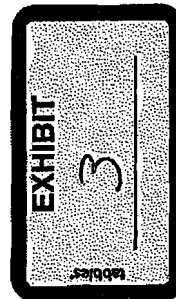
- Attachment A Conversion Plan
- Attachment B Fee Schedule
- Attachment C Service Levels
- Attachment D E-Rate and State Universal Fund
- Attachment E State of Wisconsin Forms DOA-3054 and DOA-3681



## Herman, Mark - DOA

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**From:** Welch, Andrea S - DOA  
**Sent:** Thursday, July 15, 2010 2:05 PM  
**To:** Herman, Mark - DOA  
**Subject:** FW: Revised Badgernet contract  
**Attachments:** Proposed BadgerNet agreement 021405 rev1.doc  
  
**Importance:** High



-----Original Message-----

**From:** CARTER, MICHELLE A (AIT) [mailto:mb3934@sbc.com]  
**Sent:** Monday, February 14, 2005 2:35 PM  
**To:** Konik, Andrea  
**Subject:** Revised Badgernet contract  
**Importance:** High

Andrea,

Attached is the language approved by SBC executive level. Please let me know if you want to discuss in greater detail.

Michelle

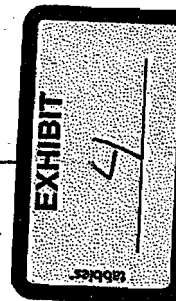
Michelle A. Carter  
Senior Account Manager  
SBC Government Accounts  
608-252-4662  
608-252-4630 fax  
608-335-4662 cellular

<<Proposed BadgerNet agreement 021405 rev1.doc>>

## **Herman, Mark - DOA**

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**From:** Welch, Andrea S - DOA  
**Sent:** Thursday, July 15, 2010 2:09 PM  
**To:** Herman, Mark - DOA  
**Subject:** FW: BadgerNet  
**Attachments:** Badgernet Agreement 02-04-05 SBC response to 01-24-05 State draft.doc; Conversion Plan 02-04-05 (SBC response to State 01-24-05 version)5.doc



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**From:** CARTER, MICHELLE A (AIT) [mailto:mb3934@sbc.com]  
**Sent:** Friday, February 18, 2005 7:01 AM  
**To:** Konik, Andrea  
**Subject:** FW: BadgerNet

Andrea -- Revised BadgerNet contract for your review. I'll be contacting Gordy Hanson this morning about E-Rate to make certain DOA has filed and that we don't need a signed contract today.

Michelle

-----Original Message-----

**From:** JACKSON, PATRICIA L. (Legal)  
**Sent:** Thursday, February 17, 2005 5:24 PM  
**To:** CARTER, MICHELLE A (AIT); HEALD, STEVEN (SBC-OPS); IONTA, SAM (SBC-OPS); PICKERING, RANDALL L (AIT); 'mbieniek@mayerbrown.com'  
**Cc:** SPRACKER, MARILYN (Legal)  
**Subject:** BadgerNet

Attached are revised drafts of the BadgerNet Network Agreement and attachments which reflect the changes which we discussed this morning. These drafts are marked to show some history of the changes.

Please note, that the issue of the changes to Section 22(3) remains unresolved. In this draft, we are still taking exception to Sections 8.3.7 and 8.3.9 of the bid response.

Also, assuming that the State intends to apply for available E-rate funding for the services set forth in this Agreement, we must sign the contract tomorrow. Given that I have conflicts tomorrow, Mike will likely be more engaged. Do you have a timetable?

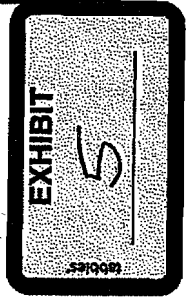
## **Marilyn S. Spracker**

Patricia L. Jackson  
312-727-3185 (phone)  
312-726-3516 (fax)

## Herman, Mark - DOA

**From:** Welch, Andrea S - DOA  
**Sent:** Thursday, July 15, 2010 2:09 PM  
**To:** Herman, Mark - DOA  
**Subject:** FW: Final Edits of BadgerNet Agreement

**Importance:** High



---

**From:** Konik, Andrea  
**Sent:** Tuesday, February 22, 2005 11:22 AM  
**To:** Michelle Carter (E-mail)  
**Cc:** Randall Pickering (E-mail); Dave Traut (E-mail)  
**Subject:** Final Edits of BadgerNet Agreement  
**Importance:** High

Michelle,

Attached is our final round of edits of the Base Agreement. The only difference from the version that I sent yesterday is that the issues related to 8.3.7 & 8.3.9 are off the table. The state will not entertain any changes to these requirements that SBC agreed to in its response to our solicitation. Negotiations (and associated conversations) are concluded as of this e-mail. The next communication that we expect is for SBC to deliver two signed original contracts for our signature.



FINAL Badgernet  
Agreement Stat...

Sincerely,  
Andrea Konik

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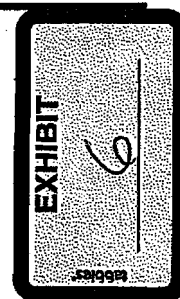
Andrea Konik

Wisconsin Department of Administration  
Bureau of Management Services - IT Procurement  
Phone: 608.264.9775  
Fax: 608.264-9500  
E-Mail: [andrea.konik@doa.state.wi.us](mailto:andrea.konik@doa.state.wi.us)

## Herman, Mark - DOA

**From:** Welch, Andrea S - DOA  
**Sent:** Thursday, July 15, 2010 2:12 PM  
**To:** Herman, Mark - DOA  
**Subject:** FW: SBC signed the contract

**Importance:** High



-----Original Message-----

**From:** CARTER, MICHELLE A (AIT) [mailto:mb3934@sbc.com]  
**Sent:** Wednesday, February 23, 2005 3:15 PM  
**To:** Konik, Andrea; robert.stuessy@deg.state.wi.us  
**Subject:** SBC signed the contract.  
**Importance:** High

Andrea / Bob,

Just wanted to confirm that Cathy Coughlin, SBC President, signed the BadgerNet contract this afternoon in Chicago. Dave Traut will be delivering two signed copies of the contract to Andrea tomorrow morning.

Thanks again for your patience and persistence!

Michelle

> -----Original Message-----

> **From:** CARTER, MICHELLE A (AIT)  
> **Sent:** Wednesday, February 23, 2005 2:38 PM  
> **To:** Konik, Andrea; 'Mietz, Mike'; 'Toner, Michael'; 'Mothershead, Carol'; 'BEN.banks@doa.state.wi.us'; 'Linde, Nan'; Bandt, Connie; Bob Stuessy (robert.stuessy@deg.state.wi.us)  
> **Cc:** TRAUT, DAVID U (AIT)  
> **Subject:** Out of the Office  
>  
> Dear DOA Core Team:  
>  
> I will be out of the office on Thursday and Friday of this week  
> attending to some much needed R&R. Please contact me either at home  
> (608) 835-9787 or on my cell (608) 335-4662 if you need immediate  
> assistance on any issues. Meanwhile, Dave Traut will deliver two sets  
> of signed BadgerNet contracts to Andrea tomorrow morning for DOA's  
> consideration.  
>  
> Once again, thank you all for your hard work and patience over the  
> past several months. I look forward to moving forward with you on the  
> BadgerNet project.  
>  
> Have a great weekend,  
>  
> Michelle  
>  
> Michelle A. Carter  
> Senior Account Manager



WISCONSIN DEPARTMENT OF  
ADMINISTRATION

JIM DOYLE  
GOVERNOR  
DANIEL J. SCHOOFF  
SECRETARY

Office of the Secretary  
Post Office Box 7864  
Madison, WI 53707-7864  
Voice (608) 266-1741  
Fax (608) 267-3842

July 22, 2010

Kenneth Stibitz  
Schools and Libraries Division  
Program Compliance  
Universal Service Administrative Company  
30 Lanidex Plaza West  
Parsippany, NJ 07054-0685

Dear Mr. Stibitz:

At the outset, I would like to thank USAC for the extension of time to respond to July 24, 2010. Please receive this letter in response to your request for information to Tara Baxter, Teach Wisconsin. Your letter asks for three specific documents. I will respond to your requests in reverse order.

**3) Documentation showing that USAC was refunded for the pre discount credit of \$257,329.36 relating to contract rates for amounts billed from July 2003 to May 2005.** Ernst & Young issued an audit Report on Compliance, "related to specific support payments... disbursed... during the fiscal year ended June 30, 2008, relative to Funding Year 2005.."<sup>1</sup> During the audit Ms. Baxter and other Department of Administration staff sought to locate documents relative to this request. Unfortunately, we have been unsuccessful in this effort.

**2) Letter of Agency for Dodgeville Public Library as it relates to frns 1342174 and 1342225.** Again, during the audit Ms. Baxter and other Department of Administration staff sought to locate documents relative to this request. Unfortunately, we have been unsuccessful in this effort. However, attached please find a letter from the former director of the Dodgeville Public Library. As stated in the letter, the Dodgeville Public Library routinely provided letters of agency (LOAs) to TEACH Wisconsin, believed that this had occurred for the year in question, and that TEACH Wisconsin had full authority to act on behalf of the Dodgeville Public Library.<sup>2</sup> The purpose of the applicable rule is to permit USAC to "ensure that the consortium members are aware of the application to be filed...."<sup>3</sup> The former Director's letter demonstrates that the Dodgeville Public Library had the requisite awareness. Therefore, we respectfully request that USAC grant permission to file an LOA the Dodgeville Public Library for Funding Year 2005, as the Federal Communications Commission (FCC) allowed in FCC 06-170.<sup>4</sup>

**1) A Copy of the Full State Master Contract with the Service Provider.** In response to this request we provide the following documents. First, a copy of the signed State Master Contract (SMC).<sup>5</sup> Additionally, the Solicitation preceding the SMC is found at <http://www.doa.state.wi.us/docview.asp?docid=4693>. The

<sup>1</sup> Report on Compliance, Ernst & Young (October 5, 2009) at p. 1.

<sup>2</sup> Letter to Whom it May Concern, Kristina L. Ross (July 19, 2009), labeled "Exhibit 1."

<sup>3</sup> FCC 06-170 (November 22, 2006) at p. 2, Section II, paragraph 3.

<sup>4</sup> *Id.* at p. 4, Section III, paragraph 7.

<sup>5</sup> Document labeled "Exhibit 2."

Solicitation is referred to in the SMC, and so is essential to understanding the contract's formation and terms. Second, copies of selected correspondence related to the SMC. These documents will demonstrate that: (A) the State of Wisconsin was diligent in its efforts to complete the SMC in a timely manner; and (B) the *de minimus* delay in completion was not detrimental to the purposes of the rule. A decision by USAC to not seek recovery of these funds would be in keeping the FCC's ruling in FCC 07-35. USAC management has demonstrated that has the ability to exercise such discretion. Therefore, we respectfully request that USAC management exercise its discretion and determine that recovery is not warranted.

A. The State of Wisconsin was Diligent in its Pursuit of a Master Contract.

The Solicitation was issued on July 4, 2004, seven months prior to the Form 471 due date.<sup>6</sup> The Solicitation itself was structured to parallel the eventual contract, and contained descriptions of standard contractual terms to be incorporated into the agreement.<sup>7</sup> Further, any party bidding on the contract was required to specifically identify any exceptions to the contractual terms as described in the Solicitation.<sup>8</sup> Consequently, when the vendor was selected in the fall of 2004, both parties had substantial agreement on the terms and conditions of the contract, and had identified areas for negotiation. It was reasonable to anticipate that these steps would greatly accelerate the pace of negotiations.

A written contract was developed by Wisconsin procurement officials on January 24, 2005. The vendor offered an initial counter on February 4, 2005, and forwarded a full version with executive approval on February 14, 2005.<sup>9</sup> The vendor offered a second revised contract on February 18, 2005, and offered to check in with TEACH officials to ensure that a signed copy of the contract was not needed on that day. Pursuant to Wisconsin law, a written agreement can constitute an enforceable contract, even if not signed.<sup>10</sup> Intent to contract is sufficient. The e-mail shows that the vendor had that intent. So TEACH program staff had good reason to believe that a valid agreement had been reached when the application was submitted.

Wisconsin procurement officials were not directly involved with the TEACH program, and so were not intimately familiar with applicable rules and procedures. Unfortunately, Wisconsin procurement officials were forced to object to two provisions in this complex transaction.<sup>11</sup> Wisconsin procurement officials acted to protect the public interest, and refused to enter into the contract until the two provisions conformed to the terms of the Solicitation.<sup>12</sup> However, under Wisconsin law a valid agreement was in place by February 23, 2005, and signatures were obtained on that date and March 2, 2005.<sup>13</sup>

<sup>6</sup> See Solicitation, Title page of the Solicitation, or the bottom of any numbered page from 1-72.

<sup>7</sup> See *id.* at pp. 63-66.

<sup>8</sup> See Standard Terms and Conditions, § 2.0, embedded in link to Solicitation following numbered p. 72.

<sup>9</sup> E-mail labeled "Exhibit 3."

<sup>10</sup> *Consolidated Papers, Inc., v. Dorr-Oliver Inc.*, 451 N.W.2d 456, 461 (Wis. Ct. App. 1989)

<sup>11</sup> E-mail labeled "Exhibit 4."

<sup>12</sup> E-mail labeled "Exhibit 5."

<sup>13</sup> E-mail labeled "Exhibit 6."

B. Any Violation of the Rule was *De Minimus* and had No Impact on Program Integrity or Implementation.

"Competitive bidding requirements serve as a central tenet of the E-rate program. They ensure more efficient pricing... and help deter waste, fraud and abuse" or "misuse of funds."<sup>14</sup> The FCC has noted that, "rigid adherence to the rule in (similar) cases does not further the purposes of the statutory goal...."<sup>15</sup> Hence, the FCC ruled in favor of allowing funding for 72 similarly situated applicants in one case alone.<sup>16</sup>

There is no allegation or evidence of waste, fraud, abuse or other misuse of funds in this case. A management decision by USAC to pursue recovery of the funds will not ensure more efficient pricing. In fact, the opposite will be true. If USAC deprives TEACH of funding then the message sent will be that Wisconsin procurement officials must accept whatever deal a vendor puts in front of them on the signing deadline date, regardless of the terms. Rigid adherence to the program rule in this case would actually undermine the goals of the statute – providing quality, affordable communications services to communities.

USAC management has demonstrated that can exercise discretion in determining whether or not to pursue recovery. Specifically, with respect to Finding ID SL2008BE066\_C01 in this audit, USAC management declined to pursue recovery where an LOA was signed on February 22, 2005, even though it too should have been executed by February 18, 2005. It would be truly ironic if the funds preserved by one reasonable decision concerning the date on an LOA were nonetheless effectively taken away by a different decision concerning the date of creation of the SMA.

A decision not to pursue recovery of these funds would also be in line with more recent decisions concerning timeliness. For example, in FCC 10-122 the FCC granted 97 requests for late filings of Form 471s. Generally speaking, all of those granted extensions had filed within 14 days of the original deadline. In this case, a legally binding agreement under Wisconsin law was in place within 5 days, and the written agreement was executed in 11 days. So the breach of timeliness in this case appears to be within the range of a *de minimus* violation in the view of the FCC.

At bottom, Wisconsin procurement officials pursued a State Master Agreement that provided services for multiple agencies and programs, including TEACH. The process was begun in a timely fashion, and was completed in a reasonable manner, consistent with their duty to protect the public interest. A binding agreement was in place several months prior to the beginning of the fiscal year in question. There is no allegation of fraud, waste, misuse or abuse. Wisconsin procurement officials have been made aware of the gravity of the issue. Accordingly, we respectfully request that USAC management to exercise its discretion in this matter and not pursue recovery under this item number, consistent with FCC decisions in case numbers 07-35 and 10-122, as well as USAC's own decision in this case with respect to the LOA in Finding ID SL2008BE066\_C01 of this audit.

<sup>14</sup> FCC 07-35 at p. 4, § III, ¶ 8; p. 5, § III, ¶ 10.

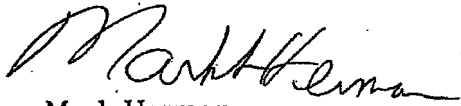
<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at p. 3, § III, ¶ 6.

July 22, 2010  
Page 4 of 4

Thank you for your consideration.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark Herman". The signature is fluid and cursive, with the first name "Mark" being more prominent than the last name "Herman".

Mark Herman  
Assistant Legal Counsel  
Wisconsin Department of Administration